

REMARKS

Claims 1-10 are presently pending in this application. New claim 10 is hereby added. By this Amendment, Applicants have amended claims 1-9 as requested by the Examiner, and in order to improve conformity to United States Patent practice. Applicants respectfully submit that amended claims 1-9 contain no impermissible new matter. Support for new claim 10 may be found on page 5 of the specification.

I. Drawings

Applicants note that the Examiner did not indicate in the November 28, 2006 Office Action whether the drawings are accepted. Applicants respectfully request that the Examiner indicate whether the drawings are accepted in the next Office Action.

II. Allowable Subject Matter

Applicants thank the Examiner for indicating that claims 3-8 would be allowable if rewritten in independent form including all of the limitations of claim 1. Applicants respectfully request that the Examiner hold the rewriting of claims 3-8 in abeyance because Applicants believe claim 1 is distinguishable from the prior art.

III. Claim Objections

The Examiner objects to claims 1-9 because they are allegedly in narrative form. By this Amendment, Applicants submit that claims 1-9 specifically point out each limitation, and respectfully request that the Examiner withdraw the objection to claims 1-9.

The Examiner objects to claim 1 because of alleged informalities. By this Amendment, Applicants have incorporated the Examiner's suggestions, and respectfully request that the Examiner withdraw the objections to claim 1.

The Examiner objects to claim 5 because of alleged informalities. By this Amendment, Applicants have incorporated the Examiner's suggestions, and respectfully request that the Examiner withdraw the objections to claim 5.

The Examiner objects to claim 7 because of alleged informalities. By this Amendment, Applicants have amended claim 7 to improve clarity, and respectfully request that the Examiner withdraw the objections to claim 7.

IV. Claim Rejections Under 35 U.S.C. §112, Second Paragraph

Claim 1 is rejected under 35 U.S.C. §112, second paragraph, for insufficient antecedent basis. By this Amendment, Applicants respectfully submit that claim 1 is in compliance with 35 U.S.C. §112, second paragraph, and respectfully request that the Examiner withdraw the rejection of claim 1.

V. Claim Rejections Under 35 U.S.C. §103(a)

Claim 1-9 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over EP 1206047² (hereinafter “EP ‘047”) in view of Hwang, *et al.* (U.S. Patent No. 7,010,317; hereinafter “Hwang”). Applicants respectfully traverse the rejection as follows.

Claim 1 (as amended) recites:

if data is transmitted in the frame, setting a transmit indicator power of the indicator bits based on a transmit data power of the data bits, and

if no data is transmitted in the frame, setting the transmit indicator power of said indicator bits based on a virtual reference power, wherein the virtual reference power is calculated based on one of a first power value defined by a radio network element, and a second power value representing an average of transmit powers used to transmit data within at least two preceding frames.

The Examiner asserts that “claim 1 requires only one of the features to be satisfied among the plurality of features separated by the choice indicator ‘or’”, and cites Hwang at col. 5, line 44 to col. 6, line 4, for allegedly teaching the above-recited features of claim 1. Applicants respectfully submit that it is quite clear that Hwang does not teach or suggest the above-recited features of (amended) claim 1. Hwang merely teaches setting the transmission power of a Transport Format Combinations Identification (TFCI) bit to be higher than the transmission power of a dedicated data channel. See Hwang, col. 5, line 67 to col. 6, line 4. Nowhere does Hwang teach

² In the Office Action, the Examiner refers to “Admitted Prior Art”. Applicants assume the Examiner was referring to EP 1206047 based on the paragraph citations given by the Examiner.

or suggest a situation where no data is transmitted in a frame, and so Hwang clearly does not teach or suggest:

if no data is transmitted in the frame, setting the transmit indicator power of said indicator bits based on a virtual reference power, wherein the virtual reference power is calculated based on one of a first power value defined by a radio network element, and a second power value representing an average of transmit powers used to transmit data within at least two preceding frames.

With regard to claim 2, the Examiner asserts that “the features in the body of...[claim 2] are similar to the features of claim 1. Hence, claim 2 is rejected on the same ground and motivation as claim 2.” Applicants respectfully disagree. Claim 2 concerns setting a “transmit pilot power”, while the cited portions of Hwang merely teach setting a transmission power of a second TFCI bit. Therefore, Hwang does not teach the elements of claim 2. Claim 2 does not recite the same features as claim 1, and Applicants respectfully submit that claim 2 is patentably distinguishable on its own and based on its dependency on claim 1.

Applicants respectfully submit that claims 1 and 2 would not have been obvious under 35 U.S.C. §103(a) because EP ‘047 and Hwang, alone or in combination, do not teach or suggest all of the features of the claims. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1 and 2.

Claim 9

Independent claim 9 recites features similar to independent claim 1, except in apparatus form, and is patentably distinguishable from the prior art according to similar reasoning. In view

of the foregoing, Applicants respectfully request the Examiner to withdraw the rejection of independent claim 9.

VI. New Claim 10

Applicants respectfully submit that new claim 10 is *at least* patentable by virtue of its dependency on claim 5 and claim 1.

VII. Conclusion

In view of the preceding amendments and remarks, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the local telephone number listed below.

Amendment Under 37 C.F.R. §1.111
U.S. Application No. 10/617,129

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The USPTO is directed and authorized to charge all required fees (with the exception of the Issue/Publication Fees) to our Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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CUSTOMER NUMBER

/Kelly G. Hyndman 39,234/
Kelly G. Hyndman
Registration No. 39,234

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